

6/29/01

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

MARQUET SERVICES, INC.

Employer

and

Case 9-RC-17544

TEAMSTERS LOCAL UNION NO. 505,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO ^{1/}

Petitioner

and

SHOPMANS LOCAL 522, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS, AFL-CIO

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{2/} the undersigned finds:

^{1/} The name of the Petitioner appears as amended at the hearing.

^{2/} The Employer and the Intervenor timely filed briefs which I have carefully considered in arriving at my decision. Although given the opportunity to do so, the Petitioner did not file a brief. In addition, the transcript is hereby corrected at page 246 line 21 to reflect that the witness is Thomas Bond rather than Russell Bond.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. The Employer, having commenced operations in Spring 2000, is engaged in the fabrication of metal products and the performance of commercial contract maintenance, service and general repair work in the vicinity of Ashland, Kentucky where it employs approximately 10 employees.

The Petitioner seeks to represent three street maintenance employees^{3/} and a grass cutting employee employed by the Employer and who perform work at AK Steel Corporation in Ashland, pursuant to a contract between AK Steel and the Employer. The Intervenor and the Employer maintain that the petition should be dismissed on the basis that they are parties to a collective-bargaining agreement covering the petitioned-for employees which constitutes a contract bar to the petition.

Pursuant to a card check, the Employer and the Intervenor entered into a recognition agreement on May 23, 2000 in which the Employer voluntarily recognized the Intervenor as the Section 9(a) exclusive majority representative of the Employer's production, maintenance, service and general repair employees for purposes of collective bargaining. On May 25, 2000 representatives of the Employer and Intervenor signed a collective-bargaining agreement, also referred to herein as the Contract, effective by its terms from May 25, 2000 to May 24, 2004, containing the following recognition language at Section 3:

The Company recognizes the Union as the exclusive representative and agent of all of the Company's production, maintenance, service and general repair employees, as defined in Section 1 hereof, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

Section 1 of the Contract reads:

This Agreement shall be applicable to all production, maintenance, service and general repair employees of the Company (hereinafter referred to as "employees") engaged in the fabrication of iron, steel, metal and other products, or in maintenance or service or general repair work in or about the Company's plant or service facilities located at Ashland, Kentucky

^{3/} The street maintenance employees were also referred to on the record as employees who operate sweeper trucks, water trucks, salt trucks and snow trucks.

and vicinity, and to work done by such production, maintenance, service and general repair employees. The Company hereby recognizes and confirms the right of its production, maintenance, service and general repair employees covered by this Agreement to perform all such production work and all maintenance, service and general repair work in or about said plant or service facilities and for the duration of this Agreement hereby assigns such work to said production, maintenance, service and general repair employees solely and to the exclusion of all other Unions, crafts, employee groups, and to the exclusion of all other employees of the Company not covered by this Agreement, and further agrees that such work shall not be performed by other persons who are excluded from the bargaining unit as set forth and described in this Section 1, except the Company shall have the right to assign bargaining unit work to the supervisory employees provided no bargaining unit employees qualified to perform the assignments are on layoff with rights to recall, or if overtime is involved and no qualified employee desires to volunteer to work such overtime, or for the purpose of instructing employees or demonstrating proper methods and procedure of performing work operations, or in cases of emergency. This Agreement is not intended and shall not be construed to include or apply to office or clerical employees, draftsmen, engineering employees, watchmen, guards or supervisors or to work performed by such employees, nor shall this Agreement include or apply to erection, installation, or construction work or to employees engaged in such work, except for the apprentice Iron Workers covered by certain provisions of this Agreement. Major extensions and major remodeling shall not be considered "Maintenance" as that term is used herein.

The contract contains provisions for, among other things, the above-described recognition of the Intervenor, union security and dues check-off, management rights, working hours, overtime pay, holidays, reporting pay, vacation, insurance, pension, seniority, leaves of absence, a grievance and arbitration procedure and no-strike/no-lockout.

Section 10 of the Contract sets forth wage rates for fabricator/welder, welder, helper A, helper B, apprentice iron worker, pilot and deckhand. Section 10 further provides that if the Employer undertakes a work operation for which the classifications in that section are not applicable, the Employer and the Intervenor will, within 30 days, establish by negotiation the classifications and wage rates for the new work operation.

The Employer and the Intervenor contend that the Contract applies to all employees of the Employer and that it is a bar to the petition. The Petitioner maintains that the Contract does not bar the petition. At the time the Employer recognized the Intervenor as the representative of its employees, it employed about 10 employees in the contractual unit, including two boat employees (pilot and deckhand) and some fabricators who were assigned to the AK Steel plant in

Ashland. However, the Employer also performed service and maintenance work for other firms in the Ashland vicinity other than AK Steel. Morris Griffiths, the Employer's president, testified that these employees were covered by the Contract, but the record does not specifically reflect the extent to which the Employer applied the terms of the Contract to them or the extent to which the Intervenor sought enforcement of those terms.

Around November 2000, the Employer began performing street maintenance and sludge hauling work at AK Steel in Ashland on a temporary basis. At that time, AK Steel intended to permanently subcontract such work upon completion of the reduction through attrition in the complement of its own employees performing that work. Thus, the Employer performed this work on a temporary basis until such time as permanent contracts could be let. From November 2000 until early May 2001, the Employer transferred or hired six employees to perform the street maintenance and sludge hauling work at AK Steel. It appears that about three employees performed the street maintenance work and about three performed the sludge hauling work. There was some interchange of employees between the two functions, the extent of which is not disclosed in the record. In mid May 2001, the Employer began performing grass cutting work at AK Steel and hired an employee to perform that work. The record reflects that prior to November 2000, the Employer did not perform any street maintenance, sludge hauling or grass cutting work.

On May 11, 2001, AK Steel let a permanent contract to the Employer for the street maintenance work effective from May 15, 2001 to May 14, 2004. On June 2, 2001, AK Steel issued a purchase order to Ross Brothers Construction^{4/} for sludge hauling services through June 1, 2004. The petition in the instant matter was filed on June 4, 2001.

On June 8, 2001, the Employer laid off three employees because the sludge hauling work had been awarded to Ross Brothers. During the week prior to the layoff, the Employer spoke with its employees who were performing the street maintenance and sludge work, explaining to them that Ross Brothers whose employees were represented by the Teamsters^{5/} were going to take over the sludge hauling work, that the Employer would have to lay off three employees and that the remaining employees would be required to join the Intervenor as a condition of continued employment.^{6/} The Intervenor sent letters dated June 12, 2001 to the three employees then performing street maintenance work for the Employer at AK Steel soliciting

^{4/} The record indicates a degree of common ownership and control of labor relations in the person of Morris Griffiths between the Employer and Ross Brothers. However, because no single employer issue was raised or litigated on the record, my analysis herein is based on the premise that the Employer and Ross Brothers are separate employers.

^{5/} It is unclear whether the term "Teamsters" when used on the record is a reference to the Petitioner, its parent international, or a sister local. After June 8, 2001, the sludge hauling work at AK Steel has been performed by Ross Brothers under a National Maintenance Agreement with the Teamsters using employees different from those who had performed that work for the Employer.

^{6/} The testimony of Dennis Johnson, the Employer's supervisor over the street maintenance and sludge hauling work, indicates that in selecting employees for layoff, he based his decision on the employees' willingness to join the Intervenor.

their compliance with the union security provisions of the Contract. Based on the record, it appears that these conversations concerning the layoff and the subsequent letters were the first attempts by the Employer to apply the Contract to employees performing the street maintenance and grass cutting work at AK Steel. ^{7/}

The Employer's current employee complement numbers about ten, including three street maintenance employees, a grass cutter, a deck hand, a pilot, a dock employee and a fabricator who are performing work at AK Steel and two fabrication/repair employees working at the Employer's shop.

In mid May 2001, Morris Griffiths spoke with Ron Atkins, the Petitioner's President. Griffiths told Atkins that he (Griffiths) was going to obtain the sludge haul contract at AK Steel and that he wanted to enter into an agreement with the Petitioner to cover that work. Atkins agreed that he would enter into such a contract and furnish employees to perform the sludge haul work. Griffiths told Atkins that he (Atkins) needed to leave his (Griffiths') other employees at AK Steel alone or it would mess the whole thing up. Atkins made no indication as to whether he would leave the other employees alone.

ANALYSIS:

A collective-bargaining agreement with a term in excess of 3 years will bar a representation election among employees covered by the contract for the three 3 following its effective date except for the period from 60 to 90 days prior to its third anniversary. *Dobbs International Services, Inc.*, 323 NLRB 1159, 1160 (1997). In order to constitute a bar to an election, the contract must be written, signed by the contracting parties, contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship and cover the employees sought in the petition. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); *Houck Transport Company*, 130 NLRB 270, 271 (1961). Where a group of employees sought in a petition are a normal addition to a bargaining unit covered by a contract which would otherwise bar a petition, the contract acts as a bar to an election among the additional employees. *Simmons Company*, 126 NLRB 656, 659 (1960); *Lansing General Hospital*, 220 NLRB 1, 3 (1975). Moreover, a promise to refrain from organizing employees, in order to bar an election, must be express, although it need not be contained in a collective-bargaining agreement. *Lexington House*, 328 NLRB No. 124 (1999). ^{8/}

^{7/} Thomas Bond, the Intervenor's steward and employee of the Employer, testified that the boat pilot, deckhand and himself were the only employees in the unit, that they were the only three who wanted the Intervenor, that the other employees declined membership in the Intervenor and that it was the employees' choice as to whether they wished to join the Intervenor. It is unclear whether Bond was limiting his testimony to employees working at AK Steel or it included employees working at other locations.

^{8/} The Employer argues that the Petitioner promised not to organize its employees involved in this proceeding and should not be permitted to do so by the subject petition. In view of my findings that the Contract is a bar to an election, I need not address the Employer's argument that the Petitioner should be bound by its alleged promise to refrain from organizing the employees sought by the Petitioner.

In the instant matter, the evidence clearly establishes that the petition was filed during the first 3 years of the Contract and more than 90 days prior to its third anniversary. The Contract is written and signed by the contracting parties. Because the Contract covers such important aspects of the employment relationship as recognition, union security and dues check-off, management rights, working hours, overtime pay, holidays, reporting pay, vacation, insurance, pension, seniority, leaves of absence, a grievance and arbitration procedure and no-strike/no-lockout; it clearly contains substantial terms and conditions of employment sufficient to stabilize the parties' collective-bargaining relationship. *Stur-Dee Health Products*, 248 NLRB 1100, 1101 (1980); *Cooper Tank and Welding*, 328 NLRB No. 97 (1999). Although the Contract does not contain specific wage rates for the classifications filled by the petitioned-for employees, it contains a provision (Section 10) which clearly contemplates the addition of new job classifications not set forth in the wage schedule and provides a method to establish wage rates for such job classifications. In *Stur-Dee* like here, the contract did not contain specific wage rates for new classifications. However, the agreement in *Stur-Dee*, like Section 10 of the Contract, contained a framework for establishing wages for newly created job classifications. Under such circumstances, the Board held that the failure of a contract to provide specific wage rates for new classifications did not remove the contract or a bar to an election. Accordingly, I conclude that the failure of the Contract to specify wage rates for the employees in the classifications sought by the Petitioner does not negate its bar quality. *Stur-Dee Health Products*, supra.

The Contract, by its terms, covers maintenance and service employees. Prior to the commencement of the Employer's street maintenance and grass cutting work at AK Steel, the contract covered all of the Employer's employees. Because the work performed by the street maintenance and grass cutting employees at AK Steel is clearly encompassed by the Unit description of "service and/or maintenance work," such employees are included in the contractual bargaining unit by the express language at Section 1 of the Contract which defines the bargaining unit. Their inclusion in the unit is also contemplated by Section 10 of the Contract which provides for the negotiation of wage rates for new job classifications. This contractual language manifests the agreement and intent of the Employer and Intervenor to include within the contractual unit employees of the type sought by the Petitioner. Accordingly, I conclude that the street maintenance and grass cutting employees are included within the contractual unit and that the Contract bars an election. Accordingly, the petition does not raise a question concerning representation and is dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in this matter be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the

Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **July 13, 2001**.

Dated at Cincinnati, Ohio this 29th day of June 2001.

/s/ Richard L. Ahearn

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